

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION  
1:09cv375**

<b>WILLIAM NORKUNAS,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>Vs.</b>	)	<b>ORDER</b>
	)	
<b>BILTMORE EIGHT, A Foreign LLC,</b>	)	
	)	
<b>Defendant.</b>	)	
_____	)	

**THIS MATTER** is before the court on the “Affidavit of Bill Norkunas.” Such affidavit of plaintiff appears to be in response to the court’s earlier Order denying Mr. Monismith’s fourth attempt to gain admission to the Bar of this court, *pro hac vice*.

There are two problems with such affidavit. First, such affidavit is not an averment of Mr. Monismith, who is the person seeking to gain admission to the bar of this court. Second, such affidavit is unaccompanied by any motion. As such, the pleading filed with this court violates both a court Order and the Local Civil Rules of this court.

First, Mr. Monismith was specifically directed in the previous Order as follows: “Any such further application in this district should be accompanied by **an affidavit from Mr. Monismith** detailing such reasons.” See Docket Entry # 4 (emphasis

added; internal quotation marks omitted). Thus, by filing a freestanding affidavit of the client, rather than a new application seeking admission of Mr. Monismith along with his affidavit, plaintiff has proceeded in a manner that contravenes what the court believed to be a very specific court directive. Second, such filing is contrary to the Local Civil Rules and the Federal Rules of Civil Procedure as a “request for a court order must be made by motion.” Fed.R.Civ.P. 8(b)(1); see also L.Cv.R. 7.1. As a practical matter, filing an affidavit unaccompanied by any extant motion runs a risk that the relief sought therein will not be addressed as ECF only tracks the progress (or lack thereof) of motions. Relating an affidavit to a previously denied motion has the same undesired result.

Now that such issues are hopefully made clear, Mr. Monismith is not without the same recourse as was provided in the earlier Order.

## **ORDER**

**IT IS, THEREFORE, ORDERED** that the “Affidavit of Bill Norkunas” (#5) is **STRICKEN** as not being in compliance with the court’s previous Order or Rule 8, Federal Rules of Civil Procedure.

Signed: October 15, 2009

Dennis L. Howell

Dennis L. Howell  
United States Magistrate Judge

